DON STOKES ET AL.

IBLA 80-254, 80-331, 80-336 Decided July 11, 1980

Appeals from decisions of the Nevada State Office, Bureau of Land Management, regarding Indian allotment applications. N 25926, etc.

Affirmed.

1. Indian Allotments on Public Domain: Generally

   No rights of Indians are violated because public lands have been withdrawn from settlement and must be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before such lands can be allotted to an Indian under section 4 of the General Allotment Act of 1887, 25 U.S.C. § 334 (1976).

2. Applications and Entries: Generally -- Indian Allotments on Public Domain: Generally

   An application for an Indian allotment, filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. § 334 (1976), which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) and (d) or the petition for classification required by 43 CFR 2531.2 may be rejected.

APPEARANCES: Don Stokes, Joseph Gary Lee, and Teressa Louise Lee Entreki pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Don Stokes, Joseph Gary Lee, and Teressa Louise Lee Entrekin each filed an application for an Indian allotment pursuant to section 4 of the General Allotment Act (Act) of February 8, 1887, 24 Stat. 389, as amended 25 U.S.C. § 334 (1976). The applications were designated by serial numbe N 25926, N 26310, and N 26309, respectively.

The Bureau of Land Management (BLM), issued the same decision in response to each application, saying:

> Regulations require that any person filing an application for Indian allotment, under the Act of February 8, 1887, must first obtain from the Commissioner of Indian Affairs a certificate showing that he is Indian and is entitled to an allotment (43 CFR 2531.1(b)).
>
> Also, the enclosed petition for classification (Form 2400-7) must be signed, dated, and returned before your application can be processed further (43 CFR 2531.2(a)).

Because the same decision and the same issues are involved in each appeal we have, sua sponte, consolidated the appeals for consideration. The decisions did not give a time limit or purport to reject the applications at this time. They simply required additional information. Appellants appealed rather than submitting the information. Their appeals are, in effect, protests or objections to these requirements. Although in the present posture of these cases the appeals are interlocutory in nature, w see no useful purpose to be gained by remanding the cases without addressing the objections raised by the three applicants. When these cas are returned to BLM, that office may provide the applicants a specific ti within which to file the required information and if it is not filed with that time the applications should be rejected for that reason.

Appellants assert in effect that the certificate of eligibility and the petition for classification are unnecessary and that allotment rights should accrue by virtue of their Indian descent and United States citizenship. They contend specifically that the "agricultural land laws cannot supersede the allotment claims of Indians." Appellant Stokes also listed a series of statutes in support of his argument.

[1, 2] Section 4 of the Act authorizes the Secretary of the Interior to issue allotments to Indians where they have made settlement on availab public lands. Thurman Banks, 22 IBLA 205 (1975). Regulation 43 CFR 2531.1(b), promulgated pursuant to the Act, requires a showing of eligibility as follows:

> Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and eligible for such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single,

> name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2531.2(b).

None of the appellants submitted the required certificate. Instead, in the application blank space specifically requesting the number of the certificate issued by the Bureau of Indian Affairs (BIA), appellants entered, "8 U.S.C. § 1401 Const. Amend. 5." This response does not compo with the requirements. Neither the cited statute, which refers to United States citizenship, nor the Constitution is in issue here.

Appellants referred again to 8 U.S.C. § 1401 (1976) in response to th application question asking for a petition for classification. This petition is necessary where lands have not yet been opened for dispositio As 43 CFR 2531.2 provides:

> Petition and applications.
>
> (a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see Subpart 2533 of this part) must file with the authorized officer, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and eligible for allotment, as specified in § 2531.1(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.
>
> The petition and the statement attached to the application for certificate must be signed by the applicant.
>
> (b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

On each allotment application form the applicant checked "no" in response to statements concerning whether the land was occupied by the applicant and whether there were improvements on the land. Applicant Stokes also checked "no" in response to the question "Do you or the mino child claim a valid bona fide settlement." The other two applicants checked "yes." However, neither of them gave any information as to the manner in which settlement was made as required by item 11 of

the BLM form, 2530-1. They all referred to a posted notice recorded in a book (giving a number), and referred to an attached form. The attached forms were identical except for written additions and assert rights based upon various statutes relating to Indians and to their citizenship rights Each applicant alleges that he or she is an Indian of Cherokee descent an each gives an address in the State of Oklahoma.

There is no clear information to show that any of the applicants have in fact, physically settled upon the lands applied for, and, particularly that any alleged settlement was prior to withdrawal of the lands from settlement, including that by Indians under the General Allotment Act. Also, there is nothing in the record to show that the lands have been classified for Indian allotment. Therefore, the petition for classification which is necessary to open the lands for settlement is required. It is well established that no rights of Indians are violated the withdrawal of public land from settlement and the requirement that su lands be classified pursuant to the Taylor Grazing Act, 43 U.S.C. § 315 (1976), before the public lands can be allotted to an Indian under sectio 4 of the General Allotment Act. Pallin v. United States, 496 F.2d 27 (9t Cir. 1974); Hopkins v. United States, 414 F.2d 464 (9th Cir. 1969); Finch v. United States, 387 F.2d 13 (10th Cir. 1967), cert. denied, 390 U.S. 1012. Nor is there a violation of any rights if an allotment application is denied where land is not classified for allotment. Finch v. United States, supra. Therefore, the BLM office properly required appellants to file the petition for classification.

Under section 4 of the General Allotment Act Indians residing on reservations are not eligible for an allotment of public land. See Palli v. United States, supra. It is for this and additional reasons that the Indian must provide the certificate of eligibility from the BIA. Their applications cannot be adjudicated and are subject to rejection unless these preliminary procedural requirements are met. Geneiva Nell Weston Smith, 48 IBLA 199 (1980). We strongly advise the applicants to enlist help from both BIA and BLM to assure that all requirements for filing are satisfied.

The additional statutes that appellant Stokes cites do not make eithe the certificate of eligibility or the petition for classification unnecessary. Certain of these statutes amend the General Allotment Act, supra. The rest, 18 Stat. 420, 43 U.S.C. § 189 (1976), and 23 Stat. 96, 43 U.S.C. § 190 (1976), referring to Indian homesteads, were repealed in 1976 by the Federal Land Policy and Management Act of 1976, 90 Stat. 2787 Nothing that the appellants have stated obviates the need to comply with the regulations implementing section 4 of the General Allotment Act. Because appellants are not applying under a law that only requires United States citizenship, the fact that they are citizens is irrelevant here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed and the cases remanded for appropriate action consistent with this decision.

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Joan B. Thompson
Administrative Judge

We concur:

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Frederick Fishman
Administrative Judge

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Douglas E. Henriques
Administrative Judge